

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ITS NATIONAL, LLC,
Plaintiff and Counter Defendant,
v.
INFINITY CARGO CORP., *et al.*,
Defendant and Counter Claimant.

Case No. 3:23-cv-00389-MMD-BNW
ORDER

I. SUMMARY

Plaintiff ITS National, LLC sued Defendant Infinity Cargo Corp. in the District of New Jersey to get Infinity to release cargo containers allegedly belonging to ITS or its customers. (ECF No. 1.) Infinity filed some counterclaims when it answered. (ECF No. 21.) The District of New Jersey transferred the case to this Court. (ECF Nos. 35, 36.) Before the Court is proposed Intervenor Defendant Matthew Transport LLC d/b/a Zoeva Logistics' motion to intervene.¹ (ECF No. 69 ("Motion").) Because Zoeva's proposed counterclaims against ITS are based on a different contract and commercial relationship than the relationship between ITS and Infinity at issue in this case, and as further explained below, the Court will deny the Motion.

II. DISCUSSION

Zoeva seeks either intervention as of right under Fed. R. Civ. P. 24(a)(2) or permissive intervention under Fed. R. Civ. P. 24(b)(1)(B). (ECF No. 69.) As to intervention as of right, Zoeva argues in pertinent part its motion is timely and it should be permitted to intervene because it has an ongoing business relationship with ITS, ITS owes it money, and ITS made defamatory allegations against both it and Infinity. (*Id.* at 6-7.) As to permissive intervention, Zoeva argues it should be permitted to intervene because it has

¹ITS responded (ECF No. 72) and Zoeva replied (ECF No. 74).

1 similar counterclaims against ITS to Infinity's, and its counterclaims share common
 2 questions of fact with Infinity's, specifically, "Zoeva and Defendant, Infinity, have worked
 3 cooperatively to provide services to ITS that ITS has failed and refused to pay for." (*Id.* at
 4 8.) ITS counters that the Court should deny the Motion because it has separate
 5 commercial relationships governed by separate contracts with Zoeva and Infinity, and it
 6 is otherwise insufficiently clear what common questions of law and fact are shared
 7 between Infinity and Zoeva's counterclaims against ITS. (ECF No. 72 at 2-3.) The Court
 8 agrees with ITS.

9 Beginning with intervention as of right, "[t]he party seeking to intervene bears the
 10 burden of showing that *all* [four of] the requirements for intervention have been met."
 11 *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (emphasis in
 12 original, citation omitted). One of those requirements is that the proposed intervenor must
 13 have, "a significant protectable interest relating to the property or transaction that is the
 14 subject of the action[.]" *Id.* Such an interest can be economic; "[t]o trigger a right to
 15 intervene, however, an economic interest must be concrete and related to the underlying
 16 subject matter of the action." *Id.*

17 Based on the evidence Zoeva filed with its Motion, Zoeva has had a commercial
 18 relationship since "in or about 2020" with ITS. (ECF No. 69-1 at 53.)² ITS' relationship
 19 with Infinity is governed by a contract they entered March 29, 2022. (*Id.*; *see also id.* at
 20 58-63 (the contract).) Daniel Jordan, an employee of both Zoeva and Infinity, says those
 21 two companies are affiliated and have worked together transporting shipping containers
 22 for ITS. (*Id.* at 53-54.) A payment dispute arose between ITS on the one side, and Infinity
 23 and Zoeva on the other. (*Id.* at 54.) To resolve it, counsel for Zoeva and Infinity drafted
 24 an agreement (*id.* at 54-55), but only Zoeva and ITS are listed as parties to it (*id.* at 65,
 25 68), and ITS never signed it in any event (*id.* at 68). ITS points out in response that its
 26 contracts with Infinity and Zoeva indicate they are distinct entities with different addresses

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 28 ²Zoeva did not file a copy of its contract with ITS with its Motion (ECF No. 69-1),
 but ITS did with its response, indicating they signed the contract February 4, 2020 (ECF
 No. 72 at 15-20).

1 and different points of contact. (ECF No. 72 at 7; *see also id.* at 15-20 (contract between
2 ITS and Zoeva), 22-27 (contract between ITS and Infinity).) An ITS employee, Roxie
3 Holben, swears that these two contracts govern the relationships between ITS and
4 Infinity, and ITS and Zoeva. (*Id.* at 29.)

5 ITS' Complaint against Infinity is based on its contract with Infinity, and primarily
6 alleges breach of that contract. (ECF No. 1 at 2-4.) ITS did not sue Zoeva. (*See generally*
7 *id.*; *see also* ECF No. 72 at 29 (affirming as such).)

8 Based on the evidence before the Court, ITS' relationship with Infinity is governed
9 by a different contract than ITS' relationship with Zoeva. *See supra.* Infinity's
10 counterclaims are necessarily based on its commercial relationship with ITS governed by
11 that same contract, because ITS sued on its contract with Infinity. *See supra.* Since ITS'
12 relationship with Zoeva is governed by a different contract, the subject matter of the
13 dispute between Zoeva and ITS is different than the dispute between ITS and Infinity, and
14 Zoeva lacks a significant protectable interest related to the contract between ITS and
15 Infinity. *See Alisal*, 370 F.3d at 919-21 (affirming the district court's denial of a motion to
16 intervene in part because the prospective intervenor's interest in the collectability of a
17 debt was insufficiently related to the environmental enforcement action brought by the
18 government that the prospective intervenor was attempting to intervene in); *Ironshore*
19 *Indem. Inc. v. Kay*, No. 2:21-cv-01706-JAD-BNW, 2022 WL 293230, at *4 (D. Nev. Feb.
20 1, 2022) (finding intervention as of right was not warranted where the two parties in the
21 case were parties to a contract that the prospective intervenor was not, and the issues
22 the court had to decide required interpretation of the contract between the parties that the
23 prospective intervenor was not a party to); *8th Wonder Pictures, LLC v. Clear Distribution*
24 *LLC*, No. CV 21-726 DSF (JEMX), 2021 WL 2323726, at *3 (C.D. Cal. Apr. 27, 2021)
25 (denying intervention as of right where the prospective intervenor was "an unsecured
26 creditor that is not in privity of contract" with the parties to the case). The Court accordingly
27 finds that intervention as of right is unwarranted here.

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1 Turning to Zoeva's permissive intervention request, "the court may permit anyone
2 to intervene who ... (B) has a claim or defense that shares with the main action a common
3 question of law or fact." *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349,
4 1353 (9th Cir. 2013) (citing Fed. R. Civ. P. 24(b)(1)). "Generally, permissive intervention
5 under Rule 24(b) requires '(1) an independent ground for jurisdiction; (2) a timely motion;
6 and (3) a common question of law and fact between the movant's claim or defense and
7 the main action.'" *Id.* (citation omitted). But "[e]ven if an applicant satisfies those threshold
8 requirements, the district court has discretion to deny permissive intervention." *Donnelly*
9 *v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citation omitted).

10 The Court exercises its discretion and declines to permit Zoeva to permissively
11 intervene because Zoeva's proposed counterclaims against ITS are insufficiently
12 related—either factually or legally—to ITS' claims against Infinity. While there appears to
13 be some factual overlap between the dispute between Zoeva and ITS, and ITS and
14 Infinity, their relationships are governed by different contracts that "will require separate
15 analysis to determine" breach and the outcome of the related claims. *Ironshore Indem.*
16 *Inc.*, 2022 WL 293230, at *5. Said otherwise, "[t]he claims generally involve separate
17 questions of law and facts because they are based on two different contracts." *8th Wonder*
18 *Pictures, LLC*, 2021 WL 2323726, at *4. *See also supra* (describing the evidence showing
19 that there are two different contracts governing the pertinent relationships here).
20 Moreover, the contract Zoeva proffers as evidence of common questions of law and fact
21 is unsigned and only lists Zoeva—not Infinity—as a party in any event. (ECF No. 69-1 at
22 65, 68.) It accordingly does not tend to show what Zoeva argues it does.

23 In sum, the Court will deny the Motion because Zoeva has not shown it satisfies
24 the factors governing either the mandatory or permissive intervention analyses. Zoeva
25 may attempt to assert any claims it has against ITS in a new lawsuit. (ECF No. 72 at 3
26 (stating as such).) This preexisting case is not the appropriate vehicle for litigation of those
27 claims.

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